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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
APPELLANT,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR CERTIORARI FILED AUGUST 17, 1951.
PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC., APPELLANT,

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 22, 1951.

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[fol. 1]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Caption omitted]

[fol. 2] MEMPHIS STEAM LAUNDRY CLEANER, INC.

VS.

A. H. STONE, Chairman of the State Tax Commission of the State of Mississippi

DECLARATION—Filed March 9, 1950

Comes the plaintiff, Memphis Steam Laundry Cleaner, Inc., by its attorneys, and in this its suit against A. H. Stone, Chairman of the State Tax Commission of the State of Mississippi, for cause of action shows unto the court as follows, to-wit:

(1) The Plaintiff is a corporation organized under the laws of the State of Delaware, domiciled at Wellington in said state; that the defendant, A. H. Stone, is chairman of the State Tax Commission of the State of Mississippi, under and by virtue of the laws and statutes thereof, and suable as such.

(2) That the plaintiff owns and operates a large steam laundry and cleaner in the City of Memphis in the State of Tennessee; that it performs the general service of a laundry and cleaner; that it has numerous applications from people in the State of Mississippi for its services; that in order to serve people in the State of Mississippi in counties contiguous to the State of Tennessee, it is sending one truck into each of the counties of Tunica, Coahoma, Marshall, Tate, Quitman and Benton, and sending two trucks into DeSoto and Panola Counties; that such counties are thickly settled with persons desiring plaintiff's laundry and cleaner service. That the plaintiff has not agent, employee, office or place of business in the State of Mississippi; that it renders service to the people in Mississippi in the counties aforesaid by sending a truck in and through municipalities [fol. 3] situated in the aforesaid counties, the driver of

which having no other authority solicits laundry for transportation from persons, firms and corporations to be transported to the plaintiff's plant in Memphis in the State of Tennessee; that such commodities as are desired to be laundered or cleaned are accepted by the driver of said trucks, brought to Memphis and there serviced and returned by the plaintiff's truck driver to the owner thereof; that for such service the plaintiff charges a fair and reasonable charge which is paid by the owner upon the delivery of the commodity in the State of Mississippi.

(3) The plaintiff alleges and avers that the defendant has demanded and required of the plaintiff that it pay a privilege tax of $50.00 per annum upon the driver of each truck soliciting business for the plaintiff's laundry in each and every county in the State of Mississippi where such business is solicited. That the defendant, through its agents, servants and employees, has threatened to attach the property of the plaintiff, consisting of trucks operating in the State of Mississippi, solely and only for the purpose aforesaid; that said demand is made under paragraphs (f) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944. The plaintiff alleges and avers that it is not liable for said privilege tax for the following reasons:

(1) That the plaintiff is not a transient vendor or dealer under the provisions of the above act.

2. If mistaken therein, the plaintiff alleges that such tax is void, unenforceable and uncollectible in that the soliciting and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner is interstate commerce and not subject to tax under the laws of the State of Mississippi, and, therefore, such tax is void and unenforceable.

[fol. 4] 3. Plaintiff alleges and avers that it does not owe said tax or any part thereof; that the said tax is void, unenforceable and collectible in that under Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, there is levied and demanded of the plaintiff a tax of $50.00 upon each individual person in charge of plaintiff's trucks per annum in each of the aforesaid counties; that, however, under Section 110, Chapter 137, Mississippi Laws of 1944, the tax would be only $8.00 upon each truck or

other vehicle in each county where the same might be operated other than that in which the laundry is located; That is to say that there is demanded and required of the plaintiff a tax of $50.00 per annum for each truck soliciting laundry in the State of Mississippi in each county where said laundry is solicited; whereas, a person situated in the State of Mississippi, soliciting laundry in the State of Mississippi from any municipality where a laundry is not located is only liable for a tax of $8.00. The plaintiff shows unto the Court that said act is void and unenforceable as being in violation of the interstate commerce clause of the Constitution of the United States in that said act creates discrimination between the solicitation of laundry in interstate commerce and the solicitation of laundry in intrastate commerce; that on account of said discrimination said act violates the 14th Amendment to the Constitution of the United States in that the same, by reason of such discrimination, deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law, and for all of said reasons said statute violates the 14th section of the Bill of Rights of the State of Mississippi; that the discrimination complained of is substantial and unreasonable; that the difference between the soliciting and transporting of laundry in intrastate commerce and that of [fol. 5] soliciting for transportation in interstate commerce is an unreasonable classification and rests upon no sound basis and may not be sustained.

Plaintiff further alleges that said statute violates Paragraph 1, Section 2, article 4 of the Constitution of the United States which provides that citizens of each state shall be entitled to all privileges and immunities of citizens of the several states. The plaintiff alleges and avers that uniformly and in all cases its trucks are driving by individuals in the employ of the plaintiff all of whom are nonresidents of the State of Mississippi, residing in Memphis in the State of Tennessee; that said persons come into Mississippi in the operation of said trucks solely for the purpose aforesaid; that the plaintiff has paid all taxes to each county or municipality or taxing district provided in Section 121, Chapter 137, Mississippi Laws of 1944, regardless of its liability therefor.

(4) Plaintiff has this day paid to the defendant the sum of $500.00, being the amount of privilege tax wrongfully and illegally demanded of the plaintiff by the defendant by reason of the aforesaid transactions, which payment has been made by the plaintiff to the defendant for the purpose of preventing the defendant, its agents and servants from arresting plaintiff's agents and employees and seizing its trucks, which action the defendant would otherwise have taken.

Wherefore, the plaintiff files this suit for the purpose aforesaid and demands judgment of the defendant in the sum of $500.00 with interest and costs.

Memphis Steam Laundry Cleaner, Inc., By Watkins & Eager, By J. W. Kirkpatrick & C. E. Clifton, Attorneys.

[File endorsement omitted.]

[fol. 6] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

ANSWER OF THE DEFENDANT—Filed May 1, 1950

Comes the defendant in the above-styled and numbered cause, by his attorney, and in answer to so much and such parts of the declaration filed against him as he is advised it is necessary to answer, answering says:

1

It is admitted that the plaintiff is a corporation organized under the laws of the State of Tennessee, domiciled at Memphis in said state; and that the defendant, A. H. Stone, is Chairman of the State Tax Commission of the State of Mississippi, and under and by virtue of the laws and statutes thereof it is made his duty to administer and enforce the provisions of Chapter 138 of the Mississippi Laws of 1944, known as the State wide privilege Tax Law.

2

It is admitted that the plaintiff owns and operated a large steam laundry and cleaner in the City of Memphis in the State of Tennessee; and that it performs a general service of laundry and cleaner; and it is admitted that it may be true that there is a demand for services of the plaintiff from people in the State of Mississippi. And it is admitted that in order to serve its customers in the State of Mississippi in counties contiguous to the State of Tennessee, it sends trucks from its plant in Memphis into each of the counties of Tunica, Coahoma, Marshall, Tate, Quitman and Benton, and sends two trucks into DeSoto and Panola [fol. 7] Counties, thus making ten trucks which travel in the counties of Mississippi for the sole purpose of soliciting, procuring, and delivering to customers in said counties in Mississippi, laundry and cleaning which it performs for citizens in said counties. It may be true that the plaintiff has no agent, employee, office or place of business in the State of Mississippi, other than its employees who come into Mississippi soliciting, procuring and delivering clothing upon which laundry and cleaning service is rendered, and it is true that it renders service to the people in the Mississippi counties mentioned by sending trucks in and through municipalities situated in said counties, the drivers of which solicit laundry and cleaning for transportation from persons, firms and corporations to be laundered and cleaned, and it may be true that such clothing and articles as it performs service on are transported to the plaintiff's plant in Memphis in the State of Tennessee, that such commodities as are desired to be laundered and cleaned are accepted by the drivers of said trucks and carried to Memphis for service and returned by said trucks to the owner thereof in Mississippi. And it is doubtless true that the plaintiff makes the usual charge for such services and collects same from the owners of the commodities serviced in the State of Mississippi.

3

It is true, as alleged in paragraph 3 of the declaration that the defendant in his capacity as the Commissioner charged with the duty and clothed with the authority of administering said Chapter 138, Laws of 1944, through his duly con-

stituted agents, demanded of the plaintiff that it pay a privilege tax of Fifty Dollars ($50.00) per annum on each truck so employed in the several counties in Mississippi for the collection of and delivery of laundry and claiming solic-
[fol. 8] ited and acquired from customers in Mississippi. And it is admitted that the defendant, through its duly constituted agents and employees, has stated to the plaintiff that it would be his duty to enforce the laws of Mississippi in connection with its activities in Mississippi, the provisions of said law authorizing the defendant to issue his warrant directed to the Sheriff of any county in which such trucks were operating without a license, and that the plaintiff in recognition of the authority and duty of the defendant to enforce the provisions of the law, paid the tax demanded rather than have its property seized and sold for the collection of the tax due. And it is true that said demands were made under paragraphs (t) and (y) of Section 45 of Chapter 138, Laws of Mississippi, said tax being definitely imposed by said sections (t) and (y) of said section of the Privilege Tax Law.

4

In answer to that part of the plaintiff's declaration in which it alleges that it is not due the tax demanded and paid, and answering said allegations seriatim, the defendant says:

(1) That the plaintiff is a transient vendor under the provisions of said Act, which defines the term "transient vendor" under the terms of said statute.

(2) Defendant denies that the tax is void, unenforceable and uncollectible in that the solicitation and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner, is interstate commerce, and therefore, not subject to tax under the laws of Mississippi. And the defendant denies that the tax is void and unenforceable.

(3) It is denied by the defendant that the plaintiff does not owe said tax or any part thereof; and denies that the
[fol. 9] said tax is void, unenforceable and uncollectible, but alleges that under paragraphs (t) and (y) of Section 45, Chapter 138 of the Mississippi Laws of 1944 plainly imposes a tax of Fifty Dollars ($50.00) for each truck in each county

in Mississippi in which business is solicited and transported out of the State to be serviced, and a charge made for the service rendered on such commodity, which is collected from the owners of said material in Mississippi. While it is true that by Section 110 of Chapter 137, Laws of Mississippi for 1934, a tax of Eight Dollars ($8.00) is levied on each truck operated in any municipality other than where the laundry is located, this is not a discrimination against a nonresident, since the small rate applies for the benefit of those persons maintaining a plant within the state, on which it pays advalorem taxes, service taxes, privileges taxes, and other taxes not borne by the nonresident who sends its representatives into the State and procures commodities to be serviced in competition with the local people who pay to the State of Mississippi these various forms of taxation. And since the legislature has the exclusive authority to classify taxpayers, such classification is not *lawful,* if on a reasonable basis. And therefore, defendant says that the said provision of the law is not unconstitutional and does not violate the Commerce Clause of the Federal Constitution, nor the Constitution of the State of Mississippi.

(4) The defendant admits that as a result of the demand made on the plaintiff it has paid to the defendant the sum of Five Hundred Dollars ($500.00) which is the correct amount of taxes due on the operation of ten trucks in the State of Mississippi, the law imposing a tax of Fifty Dollars ($50.00) on each truck in each county in which it operates. And the tax being lawfully and positively imposed by said law, it was not illegally or wrongfully demanded by the defendant and that the payment thereof was [fol. 10] only in compliance with the plain provisions of the law.

The defendant therefore denies, in toto, all of the allegations of the declaration as to the illegality or wrongful demanding and collection of the tax involved, and respectfully submits to the Court that the plaintiff is not entitled to recover anything by this suit.

A. H. Stone, Chairman of the State Tax Com. By
J. H. Sumrall, Attorney.

[File endorsement omitted.]

[fol. 11] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

FINAL JUDGMENT—June 20, 1950

This day this cause came on to be heard upon the plaintiff's Declaration and the Answer of the defendant thereto:

And it appearing unto the Court that the plaintiff's declaration states a good cause of action and that the Defendant's answer admits the allegations of fact therein contained and constitutes no defense to the plaintiff's suit, and the court being of the opinion that the plaintiff should recover,

It is ordered and adjudged by the Court that the plaintiff, the Memphis Steam Laundry Cleaners, Inc. does have and recover of and from A. H. Stone, Chairman of the State Tax Commission, the sum of Five Hundred ($500.00) Dollars with the costs of the court to be taxed.

Ordered and adjudged this the 20 day of June 1950.

M. M. McGowan.

[fol. 12] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

To the Hon. H. T. Ashford, Jr., Circuit Clerk, Hinds County:

PETITION FOR APPEAL—Filed July 5, 1950

Comes A. H. Stone, Chairman of the State Tax Commission who as the Commissioner, was sued by the Memphis Steam Laundry Cleaner, Inc., Number 12563 on the docket of the First District of Hinds County; and petitions for an appeal to the Supreme Court of Mississippi from the judgment rendered against him in said cause on June 20, 1950.

Your petitioner would show that a judgment having been rendered against him in his official capacity, he is entitled to an appeal with supersedeas, without the filing of a bond,

under the provisions of Sec. 1210 of the Mississippi Code of 1942.

Petitioner therefore requests that the record in said cause be prepared and forwarded to the Clerk of the Supreme Court of Mississippi as early as possible, in order that this case may be reached on the docket of the Supreme Court at the earliest time possible.

Respectfully submitted: A. H. Stone. By J. H. Sumrall, Attorney.

[File endorsement omitted.]

[fol. 13] IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 37,960

A. H. STONE, Chairman State Tax Commission, Appellant,

vs.

MEMPHIS STEAM LAUNDRY CLEANERS, INC., Appellee

ASSIGNMENT OF ERRORS

The appellant respectfully submits that in the trial of this cause in the lower Court, the following errors were committed, to-wit:

I

The lower Court erred in holding that the Appellee, the plaintiff in the lower Court, was "not a transient vendor" as contemplated by the law involved.

II

The lower Court erred in holding that the taxes collected by the appellant, the defendant in the lower Court, were improperly collected.

III

The lower Court erred in awarding judgment for the Appellee, the plaintiff in the lower Court.

IV.

The lower Court was without jurisdiction to entertai this suit, because the action was in effect a suit against th [fol. 14] State, and the statutory method by which the Stat permits suits to be brought against it were not followed.

V.

The lower Court erred in awarding judgment against th appellant, A. H. Stone, the defendant in the lower Court since the amount of taxes sued for had been paid into th State Treasury as required by law, before the suit was filed

VI

And for other errors to be made known on the hearing

Respectfully submitted: (S.) J. H. Sumrall, At torney for Appellant.

Certificate of service (omitted in printing).

[fol. 15] IN THE SUPREME COURT OF MISSISSIPPI

No. 37,960

Division B. Arrington, C.

A. H. STONE, Chairman, State Tax Commission,

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

(OPINION RENDERED JUNE 11, 1951)

This suit was filed by the appellee, Memphis Steam Laundry Cleaner, Inc., a foreign corporation located in Memphis, Tennessee, to recover $500.00 for privilege taxes previously paid by it to A. H. Stone, Chairman State Tax Commission of the State of Mississippi. The suit was tried by the lower court on declaration and answer and judgment rendered for appellee, from which judgment the appellant appeals.

It is admitted that the appellee was sending ten trucks into eight counties in Mississippi soliciting laundry, which it carried to Memphis, serviced and returned, and upon which a privilege tax of $50.00 was paid on the driver of each truck. This appeal involves the construction of Section 45, subsections (t) and (y), Chapter 138, Laws of Mississippi of 1944, known as the state-wide privilege tax law. Section 3 of this act provides:

"Every person desiring to engage in any business, or exercise any privilege hereafter specified shall first, before commencing same, apply for, pay for, and pro- [fol. 16] cure from the state tax commissioner or commissioner of insurance, a privilege license authorizing him to engage in the business or exercise the privilege specified therein, and the amount of tax shown in the following sections is hereby imposed for the privilege of engaging or continuing in the business set out therein."

Section 45 of said act provides:

"Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

. . . (t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

. . . (y) Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The appellee contends that it is not liable for the tax on the following grounds:

"Point I. Neither the appellee nor the drivers of its trucks were transient vendors or dealers under Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944 as defined in said act. If the paragraphs of said

statute or either of them shall be construed and enforced in this case as to render the appellee liable for the tax sought to be recovered in this case, the said paragraphs and each of them violate the interstate commerce clause of the Constitution of the United States because the [fol. 17] appellee and its agents and servants were engaged solely in Interstate Commerce and said paragraphs and each of them discriminate against interstate commerce in that under Section 110, Chapter 137, Mississippi Laws of 1944, a tax of only $8.00 would be imposed upon a truck operating exclusively in the State of Mississippi.

"Point II. Paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944, if construed as to impose liability on the appellee in this case, violate the 14th Amendment to the Constitution of the United States in that the appellee would thereby be denied the equal protection of the law, as well as due process, and for the same reason said paragr-phs and each of them, would violate the 14th Section of the Bill of Rights of the State of Mississippi."

We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason that its drivers are not transient vendors or dealers, Section 110 of Chapter 137, Laws of Mississippi 1944, local Privilege Tax Law, for the benefit of counties and municipalities, provides:

"Laundries, Sec. 110, Upon each person operating a laundry other than a hand laundry as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

[fol. 18] The appellee contends that by reason of the above section, which permits resident and licensed laundries to

operate a truck in a municipality other than where the laundry is located by paying a tax of $8.00, and requiring it to pay a tax of $50.00, discriminates against interstate commerce. The legislature, in making this classification which is reasonable, no doubt took into consideration the fact that local laundries were required to pay ad valorem, privilege, and many other taxes. The tax involved here is not a tax on interstate commerce, but a tax on a person soliciting business for a laundry not licensed in this state, a local activity which applies to residents and non-residents alike.

In the case of Craig v. Mills, 203 Miss. 692, 33 So. 2d 801, which case involved privilege taxes and where similar questions were involved, the Court said:

> "From its very nature the business of taking photographs is essentiall- localized in character. The customer, the photographer, and the camera used by him must of necessity be in the state where the photograph is taken. Moreover the tax is not laid upon the transmission of the exposed negative from Mississippi to Tuscaloosa, Alabama, in the instant case, nor upon the return of the finished product to the customer in interstate commerce. It is levied upon the local activity of taking photographs in this state which are to be thereafter developed outside of the state. The interstate commerce does not begin until after the work of the photographer in taking the negative is completed. The taking of such negative is not Commerce, but is merely a step in the preparation therefor and which is taken by one engaged in a particular calling or profession [fol. 19] in this state . . . As supporting the view that such a tax may be imposed upon the business of the appellees, in so far as the local activity of appellees' photographer is concerned, the principles announced in the following cases are likewise applicable:
>
> Brown-Forman Co. v. Kentucky, 217 U. S. 563, 573, 30 S. Ct. 578, 54 L. Ed. 883; Utah Power & Light Co. v. Pfost, 286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038, 1045-1947; Smith v. Jackson, 103 Tenn. 673, 54 S. W. 981, 47 L.R.A. 416; Willis, Constitutional Laws, p. 312; and Stone v. General Electric Contracts Corp., 193 Miss. 317, 7 So. 2d 811, Coverdale v. Arkansas-Louisiana

Pipe Line Co. 303 U. S. 604, 58 S. Ct. 736 L. Ed. 1043; McGoldtrick v. Berwind-White Coal Mining Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A.L.R. 876; Oliver Iron Mining Co. v. Lord, 262, U. S. 172, 43 S. Ct. 526, 67 L. Ed. 929."

This tax does not violate the 14th Amendment of the Constitution of the United States or the 14th Amendment of the Constitution of the State of Mississippi. In Craig v. Mills, supra, the Court held:

"The courts cannot require the legislature to specify its reasons for a classification of persons, firms, or corporations for tax purposes, but they should always presume that the legislature acted on legitimate grounds of distinction, if such grounds exist. And one who assails the classification of a statute "must carry the burden of showing that it is not based on any reasonable basis. It is presumed that the legislature in making discriminations in classifications in statutes bases them on adequate grounds."

[fol. 20] In Notgrass Drug Company et al. v. State, ex rel Rice, Attorney General, 175 Miss. 358, 165 So. 884, the Court said:

"But the applicant says that the classification and exemptions here provided violate the due process clause of the State Constitution (Section 14), and the equality and due process clause of the State Constitution (Section 14), and the equality and due process clauses of the Fourteenth Amendment to the Federal Constitution.

" 'The principles which govern the decision of this clause are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupation . . . . The fact that a statute

discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, . . . or if any state of facts reasonably can be conceived to sustain it . . . It is not the function of this Court in cases like the present to consider the propriety or justness of the tax to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the [fol. 21] Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great.' State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 U. S. 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A.L.R. 1464.

"In imposing the tax here under consideration the Legislature has the right to classify persons and commodities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality or rights.' . . . ."

We think the questions involved here ar answered in the case of Caskey Baking Co. v. Virginia, 313 U. S. 117, 85 L. Ed. 1223, where the Court said in part:

"In the State courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or in intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"1. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business at peddling is what the Act hits, and irrespective of the [fol. 22] source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on

their capital employed in manufacture in Virginia. It is said that if its baker were situated in Virginia and the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the state, or buy or procure them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions . . . . As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

"Peddlers at wholesale are not entitled to be licensed and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying business for taxation or impose any iron rule of [fol. 23] equality. Some occupations may be taxed though others are not. Some may be taxed one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. This is true here."

Reversed and judgment entered here for appellant.

Per Curiam. The above opinion is adopted as the opinion of the Court, and for the reasons therein indicated, the judgment of the court below is reversed and judgment entered here for appellant.

[fol. 24] IN SUPREME COURT OF MISSISSIPPI

No. 37,960

A. H. STONE, Chairman State Tax Comm.

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

JUDGMENT

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County, First District, and this court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 24th day of June 1950, be and the same is hereby reversed and this court now, here, proceeding to render and enter the judgment that should have been entered in the court below doth order and adjudge that the appellee take nothing by its suit and that the appellant do have and recover of and from the appellee all of the costs of this court and in the court below to be taxed, etc.

[fol. 25] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—July 9, 1951

We, the undersigned Judges, are of the opinion that the Suggestion of Error filed in the above styled cause on June 25, 1951, should be and the same is hereby overruled.

J. P. Alexander, W. G. Roberds, Lee D. Hall, R. O. Arrington, J. G. Holmes.

[fol. 26] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL—Filed July 25, 1951

To the Honorable the Supreme Court of the State of Mississippi, Division B:

The appellant, considering itself aggrieved by the final decree and judgment of this Court, entered June 11, 1951, plaintiff-appellant, Memphis Steam Laundry Cleaner, Inc., does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof, for the reasons set forth in the accompanying assignment of errors; that citation be issued in accordance with law; that order be made with respect to the appeal bond to be given by said plaintiff-appellant, and that the amount of security be fixed by the order allowing the appeal, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Wm. H. Watkins, Counsel for Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant.

[File endorsement omitted.]

[fol. 27] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 25, 1951

The Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant, has made and filed its petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court, entered June 11, 1951, suggestion of error overruled July 13, 1951, and

from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and is hereby allowed as prayed for.

It is ordered that the amount of the appeal bond be and the same is hereby fixed at the sum of Five Hundred ($500) Dollars, with good and sufficient security and shall be conditioned as may be required by law.

It is ordered that citation shall issue in accordance with law.

July 20, 1951.

Harvey McGehee, Chief Justice of the Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 28] Bond on Appeal for $500.00 approved and filed July 25, 1951 omitted in printing.

[fol. 29] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed July 25, 1951

The Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant in the above-entitled cause in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of the State of Mississippi, date June 11, 1951, suggestion of error overruled July 13, 1951.

1. The Supreme Court of the State of Mississippi erred in holding that the activities of the Memphis Steam Laun-

dry Cleaner, Inc., plaintiff-appellant in the State of Mississippi were local and interstate in character and subject to state taxation.

2. The Supreme Court of the State of Mississippi erred in holding that Paragraph (t) and Paragraph (y), Section 45, Chapter 138, Mississippi laws of 1944 were consistent and did not violate the interstate commerce clause of the Constitution of the United States.

3. The Supreme Court of the State of Mississippi erred in holding that Paragraph (t) and Paragraph (y) Section 45, Mississippi laws of 1938 did not discriminate against interstate commerce and that under Section 110, Chapter 137, Mississippi laws of 1944 a tax of only $8.00 would be imposed upon a truck operating exclusively in [fol. 30] the State of Mississippi and performing identical services as that of the plaintiff-appellant.

4. The Supreme Court of the State of Mississippi erred in enforcing and construing Paragraph (t) and Paragraph (y) Section 45 Chapter 138, Mississippi laws of 1944 as to violate the commerce clause of the Constitution of the United States.

5. The Supreme Court of the State of Mississippi erred in construing and enforcing Paragraph (t) and Paragraph (y) Section 45 Mississippi laws of 1938 as to create discrimination between interstate and intra-state commerce.

6. The Supreme Court of the State of Mississippi erred in failing and refusing to affirm the judgment of the Circuit Court, First Judicial District of Hinds County, Mississippi, wherein it was held that the palintiff-appellant was subject to the tax imposed in Paragraph (t) and Paragraph (y) Section 45, Mississippi laws of 1944.

7. The Supreme Court of the State of Mississippi erred in reversing the judgment of the Circuit Court, First Judicial District, Hinds County, Mississippi and in dismissing the suit of the plaintiff-appellant, it appearing that the plaintiff-appellant was engaged in interstate commerce and its activities not subject to taxation.

8. The Supreme Court of the State of Mississippi erred in holding that the State of Mississippi might levy a privilege tax upon the plaintiff-appellant as a condition precedent to engaging in interstate commerce in the State of Mississippi.

9. The Supreme Court of the State Mississippi erred in holding that the statutes of the State of Mississippi referred to were valid and might be enforced against the plaintiff-appellant though discriminating against interstate commerce.

[fol. 31] 10. The Supreme Court of the State of Mississippi committed error in holding that paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 were consistent with the Fourteenth Amendment to the Constitution of the United States providing that no person should be denigd due process of law or the equal protection of the law.

11. The Supreme Court of the State of Mississippi committed error in holding that paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 did not violate the Fourteenth Amendment to the Constitution of the United States providing that the State should not deprive any person of due process of law or deny to any person the equal protection of the law.

12. Other causes to be shown at the hearing.

Wherefore plaintiff-appellant prays that the final decree of the Supreme Court of the State of Mississippi be reversed and for such other reasons as the Court may deem fit and proper.

July 20, 1951.

Wm. H. Watkins, Counsel for Memphis Steam Laundry Cleaner, Inc., Plaintiff-appellant.

[fol. 32] Citation in usual form showing service on J. H. Sumrall omitted in printing.

[fols. 33-35] Statement required by rule 12 of the rules of the Supreme Court of the United States: (omitted in printing).

[fols. 36-37] Praecipe (omitted in printing).

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 16, 1951

(a) Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The activities of the appellant in Mississippi were not of local character but were interstate commerce.

2. Paragraph (t) and (y), Section 45, Mississippi Laws of 1944, as construed by the Supreme Court of Mississippi in this case violates paragraph 3, Section 8 of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. In that the appellant was required to pay a privilege tax of $50.00 upon each truck as a condition precedent to engaging in interstate commerce between Memphis, Tennessee and points in the state of Mississippi.

4. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate paragraph 3, Section 8, constitution of the United States providing that Congress shall have power to regulate interstate commerce in that the sections of said Act create discrimination between intra-[fol. 40] state and interstate commerce by reason of the fact that a person transacting such activity entirely within the State of Mississippi, under Section 110, Chapter 137, Mississippi Laws of 1944 would pay only $8.00 on each truck and that appellant was required to pay $50.00 per truck in carrying on the same occupation.

4. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, now deny to any person within its jurisdiction the equal protection of the law; for that a person carrying on the same activity within the State of Mississippi as appellant does in interstate

Commerce, was required to pay only a tax of $8.00 per truck whereas the appellant was required to pay a tax of $50.00 upon each truck while engaged in same occupation.

5. The tax imposed on the appellant in this case by the Supreme Court of Mississippi may not be justified on the ground that appellant was a transit vendor for that an activity in interstate commerce may not be labeled as a local activity thereby depriving the appellant of rights created and protected by the Constitution of the United States.

(b) Appellant designates the entire record, as filed in the above entitled case, for printing by the Clerk of this Court.

W. H. Watkins, C. E. Clifton, P. H. Eager Jr., Thos. H. Watkins, Attorneys for Appellant.

[fol. 41] Certificate of Service (omitted in printing).

[fol. 42] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 253

[Title omitted]

ORDER—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.